

State of Idaho

Send invoices to the address
listed
below or as indicated in the
comments or instructions field
Boise, ID 83720-0075



State of Idaho

THIS NUMBER MUST
APPEAR
ON ALL DOCUMENTS

Participating Addendum
PADD1015 - 01

Participating Addendum
Contract Extension - 01

DELIVER State of Idaho Various Agencies
TO: Various State Agencies
located throughout Idaho

Various, ID 83701

Date: Fri Aug 24, 2007
F.O.B: Destination
Terms:

VENDOR: DELL MARKETING LP
ONE DELL WAY RR8 BOX 8706
ROUND ROCK, TX 78682
Attn: Senior Proposals Manager
Vendor Nbr: 19418
Emailed To: josh_bashara@ dell.com
Phone: 800 725-3796
Fax: 512 283-9092
Account Number: P00000024205

Start of Service Sat Sep 01, 2007
Date
Mon Aug 31, 2009
End of Service
Date:
RFQ#: [RFQ04330](#)
DOC#: PREQ8690

Buyer: [MARK LITTLE](#) 208-332-1611

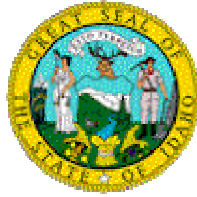
Item No	Description	Quantity UOM	Unit Price	EXTENSION
000	BLANKET PURCHASE AGREEMENT (line item particulars follow)	1 lot		8000000.00
	Total:			8000000.00
Blanket Comments:	<p>CONTRACT FOR COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS & RELATED SERVICES CONTRACT PADD1015 EXTENSION</p> <p>This contract extension and the provisions hereof are hereby made part of that certain State of Idaho contract number PADD1015 for COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS & RELATED SERVICES for VARIOUS STATE AGENCIES dated OCTOBER 13, 2004 between DELL MARKETING LP as "Contractor" and the State of Idaho as "State." Contractor and State hereby agree as follows:</p> <p>All of the terms and conditions contained in the Contract shall remain in full force and effect, except as expressly modified herein. The effective date of this extension is SEPTEMBER 01, 2007.</p> <p>This Contract is extended for TWO (2) YEARS commencing SEPTEMBER 01, 2007 and expiring AUGUST 31, 2009. The same terms, conditions and prices prevail for this contract extension period.</p> <p>The dollar amount listed in the Contract extension pricing is an estimate and cannot be guaranteed. The actual dollar amount of the contract may be more or less depending on the actual orders, requirements, or tasks given to the Contractor by the State or may be dependent upon the specific terms of the Contract.</p> <p>SIGNED AND DATED ACCEPTANCE LETTER FROM DELL MARKETING LP IS ON FILE AT THE DIVISION OF PURCHASING.</p>			

Item No	Description	Quantity UOM	Unit Price	EXTENSION
001	Computer Equipment, Software, Peripherals and Related Services (204-83) (nt)	1 LOT	8000000.00	8000000.00

General Comments:	<p>This Contract is for Computer Equipment, Software, Peripherals and Related Services pursuant to Western States Contracting Alliance (WSCA) and Minnesota Price Agreement A63307. The contract is for the benefit of State of Idaho Agencies, institutions, and departments and eligible political subdivisions or public agencies as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Master Contract on an as needed basis for a period of three years commencing September 1, 2004 and ending August 31, 2007.</p> <p>Contract Title:.....Dell Marketing L.P. Contract Usage Type:.....Optional Use Public Agency Clause:Yes Contract Administration:....Mark Little ---Phone Number:.....208-327-7465 ---E-Mail:.....mark.little@adm.idaho.gov</p> <p>Contractor's Primary Contact ---Attn:.....Mark Oberhauser ---Address:.....One Dell Way, MS 8707 ---City, State, Zip:.....Round Rock, TX 78682 Phone Number:.....512/ 723-7579 Fax Number:.....512/ 283-9092 E-Mail:.....Mark_Oberhauser@Dell.com</p> <p>CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERING AGENCY. DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment.</p> <p>QUANTITIES: The State of Idaho, Division of Purchasing can only give approximations of quantities and will not be held responsible for figures given in this document.</p> <p>Order Placement Address:</p> <p>---Company Name:..... Dell Marketing L.P. ---Inside Sales Rep:.....Scott Dickson ---Address:.....One Dell Way, MS 8707 ---City, State, Zip:.....Round Rock, TX 78682 ---Phone:800/ 981-3355 ext 63886 ---Purchase Order Fax800/ 433-9527 ---e-mail:.....Scott_Dickson@Dell.com ---Account Executive:.....Jim Woolley ---Phone:.....801/ 994-6774 ---e-mail:.....Jim_Wooley@Dell.com</p> <p>Payment Address:</p> <p>---Company Name:..... Dell Marketing L.P. ---Address:.....One Dell Way, MS 8707 ---City, State, Zip:.....Round Rock, TX 78682</p> <p>THIS CONTRACT, (including any files attached), CONSTITUTES THE STATE OF IDAHO'S ACCEPTANCE OF YOUR SIGNED BID, QUOTATION, OR OFFER (including any electronic bid submission), WHICH SUBMISSION IS INCORPORATED HEREIN BY REFERENCE AS THOUGH SET FORTH IN FULL.</p> <p>In the event of any inconsistency, unless otherwise provided herein, such inconsistency shall be resolved by giving precedence in the following order:</p> <ol style="list-style-type: none"> 1. This Statewide Blanket Purchase Order document. 2. The state of Minnesota's original solicitation document. 3. The Contractor's signed bid, quotation, or offer. <p>INVOICES MUST BE SENT TO THE IDAHO ORDERING AGENCY.</p>			
	<p>Instructions: Freight / Handling Included in Price</p>			
<p>By: MARK LITTLE</p>				

State of Idaho

Send invoices to the
address listed
below or as indicated
in the
comments or
instructions field
Boise, ID 83720-0075



State of
Idaho

Participating Addendum

THIS NUMBER MUST
APPEAR
ON ALL DOCUMENTS

Participating
Addendum
PADD1015

DELIVER TO: State of Idaho Various Agencies
Various State Agencies
located throughout Idaho

Various, ID 83701

Date: **Fri Dec 31, 2004**

F.O.B: **Destination**

Terms:

VENDOR: **DELL MARKETING LP**
ONE DELL WAY RR8 BOX 8706
ROUND ROCK, TX 78682
Attn: Senior Proposals Manager
Vendor Nbr: 19418
Emailed To: kim_whitley@dell.com
Phone: 800 725-3796
Fax: 512 283-9092
Account Number: P00000024205

Contract From **Tue Aug 31, 2004**
Date

Contract To **Fri Aug 31, 2007**
Date:

RFQ#: **RFQ04330**
DOC#: **PREQ8690**

Buyer: **MARK LITTLE** 208 327 7359

Item No	Description	Quantity UOM	Unit Price	EXTENSION
000	BLANKET PURCHASE AGREEMENT (line item particulars follow)	1 lot		1.00
	Total:			1.00
Blanket Comments:	This Contract is for Computer Equipment, Software, Peripherals and Related Services pursuant to Western States Contracting Alliance (WSCA) and Minnesota Price Agreement A63307. The contract is for the benefit of State of Idaho Agencies, institutions, and departments and eligible political subdivisions or public agencies as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Master Contract on an as needed basis for a period of three years commencing September 1, 2004 and ending August 31, 2007.			

Contract Title:.....Dell Marketing L.P.

Contract Usage Type:.....Optional Use

Public Agency Clause:Yes

Contract Administration:....Mark Little

---Phone Number:.....208-327-7465

---E-Mail:.....mlittle@adm.state.id.us

Contractor's Primary Contact

---Attn:.....Mark Oberhauser

---Address:.....One Dell Way, MS 8707

---City, State, Zip:.....Round Rock, TX 78682

Phone Number:.....512/ 723-7579

Fax Number:.....512/ 283-9092

E-Mail:.....Mark_Oberhauser@Dell.com

CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERING AGENCY. DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment.

Item No	Description	Quantity UOM	Unit Price	EXTENSION
001	Computer Equipment, Software, Peripherals and Related Services (204-83) (nt)	1 LOT	1.00	1.00
General Comments:	QUANTITIES: The State of Idaho, Division of Purchasing can only give approximations of quantities and will not be held responsible for figures given in this document. Order Placement Address: ---Company Name:..... Dell Marketing L.P. ---Inside Sales Rep:.....Scott Dickson ---Address:.....One Dell Way, MS 8707			

---City, State, Zip:.....Round Rock, TX 78682
---Phone:800/ 981-3355 ext 63886
---Purchase Order Fax800/ 433-9527
---e-mail:.....Scott_Dickson@Dell.com
---Account Executive:.....Jim Woolley
---Phone:.....801/ 994-6774
---e-mail:.....Jim_Wooley@Dell.com

Payment Address:

---Company Name:..... Dell Marketing L.P.
---Address:.....One Dell Way, MS 8707
---City, State, Zip:.....Round Rock, TX 78682

THIS CONTRACT, (including any files attached), CONSTITUTES THE STATE OF IDAHO'S ACCEPTANCE OF YOUR SIGNED BID, QUOTATION, OR OFFER (including any electronic bid submission), WHICH SUBMISSION IS INCORPORATED HEREIN BY REFERENCE AS THOUGH SET FORTH IN FULL.

In the event of any inconsistency, unless otherwise provided herein, such inconsistency shall be resolved by giving precedence in the following order:

1. This Statewide Blanket Purchase Order document.
2. The state of Minnesota's original solicitation document.
3. The Contractor's signed bid, quotation, or offer.

INVOICES MUST BE SENT TO THE IDAHO ORDERING AGENCY.

Instructions:

Freight / Handling Included in Price

By: **MARK LITTLE**

**PARTICIPATING ADDENDUM
State of Idaho Contract Number PADD1015**

**WESTERN STATES CONTRACTING ALLIANCE
Dell Marketing, L.P.
MASTER PRICE AGREEMENT
Minnesota Price Agreement Number A63307**

1. Scope: All state governmental entities within the State of Idaho and public agencies (as defined by Idaho Code, Section 67-2327) are authorized to purchase products and services under the terms and conditions of the Minnesota price agreement. These public agencies include any city or political subdivision of the State of Idaho, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties, cities, or any political subdivision created under the laws of the State of Idaho; and public schools and institutions of higher education. It will be the responsibility of the public agency to independently contract (i.e., issue purchase orders) with the contractor and/or comply with any other applicable provisions of Idaho Code governing public contracts.

2. Applicable Approved Purchasing Agreement: The following provisions supplement and/or add to the Master Price Agreement.

Parties to this Participating Addendum

The parties to this Participating Addendum (PA) are Dell Marketing, L.P. (Contractor) and the State of Idaho by and through its statutory agent, the Division of Purchasing within the Department of Administration (State) on behalf of the entities identified in the paragraph titled "Scope" of this Participating Addendum (procuring agencies).

Idaho Administration Reporting and Fees:

The contractor agrees to provide quarterly price agreement utilization reports to the Idaho administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The contractor will submit quarterly reports to the Idaho Administrator. These reports shall include the gross Idaho sales, less returns, cancellations, and replacements for the quarterly period subtotaled by procuring agency name within procuring agency state name. The report shall be accompanied with a check payable to the Treasurer, State of Idaho for an amount equal to 1.25% of the gross Idaho sales (less returns and credits) for the quarterly period. The State understands and agrees that Contractor will raise the negotiated Minnesota Price Agreement prices by this amount. This report will be provided 30 calendar days from the close of the calendar quarter.

Applicable Law:

Notwithstanding Paragraph 5 (Order of Precedence) of Minnesota Price Agreement No. A63307, Paragraph 32 (Governing Law) of Minnesota Price Agreement No. A63307 is supplemented with the following, which shall apply to this PA.

The State of Idaho's PA and all purchase orders issued there under by procuring agencies shall be construed in accordance with, and governed by the laws of the State of Idaho. Except to the extent the provisions of the PA are clearly inconsistent therewith, the PA shall also be governed by the applicable provisions of the Idaho Uniform Commercial Code (UCC). To the extent this PA entails delivery or

performance of services, such services shall be deemed "goods" within the meaning of the IUCC, except where deeming such services as "goods" would result in a clearly unreasonable interpretation. Any action to enforce the provisions of this PA shall be brought in state district court in Ada County, Boise, Idaho. In the event any term of this PA is held to be invalid or unenforceable by a court, the remaining terms of this PA will remain in force.

3. Lease Agreements: A lease agreement has not been approved for use for procuring agencies within the State of Idaho.

4. This PA is not for major, large hardware or hardware and software offerings. Individual units/configurations cannot exceed \$50,000.00 each. This is not a restriction on how many units/configurations that can be purchased, but on the value of each individual unit/configuration. This PA includes Bands 1 File/Print Servers, Mid-Range Servers, Band 2 Desktops, Laptops, Band 3 Printers, Band 4 Storage Solutions, and Band 5 PDAs per the Minnesota Price Agreement. It does not include LAN equipment and related software (routers, switches, terminals, network software, etc...), General Purpose Software, or **photocopiers, facsimile machines or** multifunctional equipment designed to include any combination of copying, printing, scanning, or faxing that is functionally equivalent to equipment available to State Agencies through the State of Idaho's existing Statewide Photocopier and/or Facsimile Contracts unless such equipment costs less than \$900.00, or is inkjet-based, or color capable. Requests for exceptions must be sent to the Division of Purchasing in writing by the requesting agency.

5. Primary Contact: The primary contact and administrator of this agreement for the State of Idaho is as follows:

Mark Little, IT Purchasing Officer
Division of Purchasing
5569 Kendall Street (Zip 83706-1231)
P O Box 83720
Boise, ID 83720-0075
Ph: 208-327-7359

6. Price Agreement Number: All purchase orders issued by procuring agencies within the jurisdiction of this participating addendum shall include the following price agreement numbers:

A63307 (Minnesota)
PADD1015 (Idaho)

This PA and Minnesota Price Agreement together with its exhibits and attachments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this PA and the Minnesota Price Agreement, together with its exhibits, shall not be added to or incorporated into this PA or the Minnesota Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this PA and the Minnesota Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS HEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

State of Idaho
Division of Purchasing

By: 

Name: Mark A. Little

Title: I.T. Purchasing Officer

Date: 10/14/04

Dell_Participating_Addendum (2)--Final (PADD1015)

Contractor: Dell Marketing, L.P.

By: 

Name: Mark W. Oberhauser

Title: Dell Public Contracts Manager

Date: 10/13/04

ATTACHMENT A
MASTER BUY & TRY

Samples / Evaluation Units – Dell's "Buy and Try" Program

Dell has put together a special program to address the needs of our customers to evaluate our products. Under this "Buy and Try" program, when a Customer wishes to evaluate a particular Dell product:

- Dell will ship Customer the equipment requested in accordance with a numbered Dell quotation.
- Dell will send the Customer an invoice for the equipment.
- Dell will extend its standard Total Satisfaction Return Policy to the Customer for the designated period (number of days), beginning on the day of shipment. Anytime during the period, the district may return the equipment to Dell in accordance with the terms of the Minnesota Pricing Agreement. At the end of the period, the invoice will become due and payable.

Customer agrees to not modify, change or mark the equipment in any manner. Dell requires payment for any equipment that has been modified, changed, marked or evidences more than normal wear and tear.

Custom Factory Integration Services

These provisions below apply to the Custom Factory Integration Services or offerings from Dell which may be purchased under this Agreement.

1. SERVICES

These provisions shall apply each time Customer engages Dell to provide Custom Factory Integration Services ("Services") as more fully set forth, in each case, on the "Technical Specification" form or "Statement of Work" ("SOW") to be executed by Customer and Dell for each Service requested. Custom Factory Integration Services may include:

- Installation or integration of Customer's custom software image, which may include industry standard and/or custom software (in each case, a "CFI Configuration")
- Installation or integration of a pre-configured bundle of third party hardware and/or software in a Dell system ("Order Ready")
- Asset tagging hardware integration or other system integration services
- Development and validation by Dell of the Customer-specific CFI Configuration ("Image Management")
- Notification of changes to those portions of a CFI Configuration that are Dell-branded and that are originally listed on Dell's standard parts lists ("Dell Standard Products") ("Image Maintenance Service").

2. CUSTOM FACTORY INTEGRATION SERVICES

2.1. Terms. At Customer's request, Dell may deliver to Customer a CFI Configuration for a per-system fee to be determined between the parties. Customer is responsible for determining the technical specifications for each CFI Configuration and for ensuring that those technical specifications are properly documented to Dell on the Technical Specification form or SOW. Customer's purchase of Dell Standard Products in connection with Custom Factory Integration Services will, in each case, be governed by the purchase Agreement between Dell and Customer. If the terms and conditions of this Agreement differ from the terms of the Purchase Agreement, this Agreement shall control with regard to the Custom Factory Integration Services.

2.2. Purchase of Third Party Elements, Software Installation. "Third Party Elements" means any hardware, software, or services other than Dell Standard Products that are part of the Services, whether provided by Customer or procured for Customer by Dell. Customer shall be responsible for procuring any Third Party Elements included in the Services; however Customer may request that Dell procure the Third Party Elements. If Customer elects to have Dell procure such Third Party Elements, Customer shall provide to Dell a firm purchase order for the number of CFI systems to be ordered for which Dell is requested to procure such elements. In the event the Third Party Elements procured by Dell are not used for CFI orders within a reasonable time, not to exceed 90 days following purchase of such elements by Dell, the Third Party Elements will be shipped and invoiced to Customer, and Customer will pay for these elements within thirty (30) days after the date of invoice. Dell is not responsible for any revision or engineering changes in any Third Party Elements included in CFI Services. Customer will provide Dell with any custom software to be installed in a CFI Configuration and Customer authorizes Dell to copy, install and modify, if necessary, all software to be installed in any CFI Configuration or to be recorded in electronic media for subsequent re-installation of backup. Customer warrants to Dell that it has obtained any licenses, consents, or approvals required to give Dell and its subcontractors or employees the right or license to access, copy, distribute, use and/or modify (including creating derivative works) the Third Party Elements and all custom software to be included in the CFI Configuration, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such elements. Certain Third Party Elements may be covered by the CFI Parts Replacement Program.

See http://www.dell.com/us/en/gen/services/service_cfcliclientsupportservices.htm for more details.

- 3.1. Terms. Dell will assign a Project Manager to each Image Management Services transaction. The Project Manager will work with Customer to establish a SOW for each transaction and coordinate the scheduling and performance of the work on Customer's site. Customer may request that Dell implement a change in the scope of the Image Management Services performed under a specific SOW, including the performance of an out-of-scope service (a "Change in Scope"). In addition, one of the following events may result in a Change of Scope (i) an act or omission by Customer that impacts Dell's performance of the Image Management Services, including, without limitation, an error or change in information provided to Dell by Customer or (ii) a change of law or other unanticipated event, including, without limitation, a "Force Majeure" event. Customer changes to the factory-installed CFI Configuration, including adding new software applications to the core hard drive image or transitioning a hard drive image to a new software platform or a new CFI Configuration will require the development of a new hard drive image and will be treated as a separate Image Management Services transaction (requiring an additional SOW), not a Change of Scope. Any Change of Scope must be documented and approved in writing by both parties. Any time spent by Dell investigating the feasibility of a Change of Scope will be billed at the rate specified in the SOW, whether or not the Change of Scope is put into effect.
- 3.2. Customer Responsibilities. Customer acknowledges that Dell's performance and delivery of the Image Management Services are contingent upon: i) Customer providing access to its personnel, facilities, equipment, hardware, software, network and information and (ii) Customer's timely decision-making, notification of relevant issues or information and granting of approvals and/or permission. Customer will promptly obtain and provide to Dell any required consents necessary for Dell's performance of the Image Management Services described in the applicable SOW.
- 3.3. Image Maintenance Service. Dell will revise the CFI Configuration to address Covered Hardware Transitions. A Covered Hardware Transition is (i) any hardware transitions or hardware end-of-life applying to Dell standard hardware parts installed during Dell's manufacturing process; (ii) changes to processors and motherboards installed at Dell's factory; and (iii) changes to drivers installed by Dell at Dell's factory. This service does not include changes in the hardware or software platform.

- 4.1. Technical Specification Form (SOW). Customer represents and warrants the facts set forth on the Technical Specification form, SOW or any other document provided by Customer. Dell shall be entitled to rely on the Technical Specification form or SOW. Dell is not responsible for the operation or suitability of any Service provided in accordance with the Technical Specification form or SOW. Dell is not responsible for liability or damage arising from the installation of a CFI Configuration or Service performed in accordance with the Technical Specification form, SOW, and/or Customer's instructions, whether oral or written. If Dell is of the reasonable view that the proposed Services are not technically feasible, Dell reserves the right to refuse to proceed with the development of such CFI Configuration or the performance of such Services at any time. Dell will be relieved of the performance of any Technical Specification form or SOW if, in its reasonable view, Customer has breached any of the representations and warranties in this Agreement.
- 4.2. Export. Customer acknowledges that the CFI Configurations and services licensed or sold under this Agreement are subject to the export control laws and regulations of the United States and/or the country from which they are supplied and intended to be used. Customer confirms that with respect to the Dell Standard Products, CFI Configurations, Third Party Elements, or other items provided by Customer collectively, ("Products"), it will not export or re-export them, directly or indirectly, except in accordance with such applicable laws and regulations. Customer confirms that such Products, will not be destined for a prohibited chemical, biological or nuclear weapon or missile use. Customer represents and warrants that software provided by Customer and included in any CFI Configuration contains no encryption or, to the extent that it contains encryption, the software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide Dell with all of the information needed for Dell to

obtain export licenses and classification from the United States government and to assist Dell in obtaining such licenses and classifications, as required. Dell's acceptance of any order for a CFI Configuration is contingent upon the issuance of any applicable export license required by the United States Government, and in no event shall Dell be liable for delays or failure to deliver a product or service resulting from Customer's failure to obtain such license or provide needed information. Customer further represents and warrants that any the CFI Configurations, software, and services provided by Dell on behalf of Customer are not controlled under the International Traffic in Arms Regulations.

- 4.3. Regulatory Requirements. Dell shall not be under any obligation to perform any Technical Specification form or SOW or to install any Third Party Elements as part of the CFI Configuration or proceed with a CFI Configuration if such Third Party Elements, or the resulting CFI Configuration, do not satisfy the local regulatory requirements of the country to which the CFI Configuration is to be shipped.
- 4.4. No Warranties. **DELL MAKES NO WARRANTIES RELATING TO THIRD PARTY ELEMENTS INCLUDED IN ANY CFI CONFIGURATION OR WITH THE SERVICES. DELL DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE SERVICES OR SUCH THIRD PARTY ELEMENTS.**
- 4.5. Limitation of Liability. **NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY DELL UNDER THIS CUSTOM FACTORY INTEGRATION SERVICES AGREEMENT EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DELL'S TOTAL LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, ANY EVENT OR SERIES OF CONNECTED EVENTS OCCURRING IN CONNECTION WITH THIS CUSTOM FACTORY INTEGRATION SERVICES AGREEMENT, SHALL NOT EXCEED THE AMOUNT OF FEES PAID UNDER THIS AGREEMENT FOR THE AFFECTED SERVICES DURING THE PRIOR YEAR.**
- 4.6. Indemnification. Customer accepts responsibility for, and agrees to indemnify and hold Dell harmless from, any and all liability, damages, claims, or proceedings arising out of (i) the failure of Customer to obtain the appropriate license or other intellectual property rights to support any Technical Specification form or SOW or the installation of the CFI Configuration, including the right to make any copies or reproductions of the software, (ii) any inaccurate representations regarding the existence of an export license or the eligibility for export of software without a license or (iii) any failure to provide information needed to obtain such a license.
- 4.7. Assignment. Customer may not assign this Agreement without the prior written consent of Dell, except that any wholly-owned subsidiary or affiliated company under common control with Customer may obtain Services from Dell or any wholly-owned subsidiary or affiliate of Dell under the authority of, and in accordance with, the terms and conditions of this Agreement.
- 4.8. Notices. All communications provided for hereunder shall be sent by postage prepaid first-class mail, receipted courier service, facsimile telecommunication or electronic mail to the address which appears below each party's signature below or to such other address as any party shall specify by notice in writing to the other party.
- 4.9. Section Headings. The section headings contained in this Agreement are inserted for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 4.10. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.
- 4.12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.